



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Brevco, Inc.
File: B-232388
Date: December 29, 1988

DIGEST

1. Protest against numerous provisions of solicitation as being ambiguous or vague such that a bidder could not adequately prepare its bid is denied where review of each provision shows intent of agency was clear from solicitation.
2. Protest against experience requirements in solicitation for window restoration as being overly restrictive is denied where agency has justified restriction because of historical nature of building and fact that building will be occupied while contract is on going.

DECISION

Brevco, Inc., protests that invitation for bids (IFB) No. 00-88-B-66, issued by the Department of Agriculture for window restoration is ambiguous and lacking in sufficient information regarding the work to be performed to enable bidders to prepare their bids.

We deny the protest.

The IFB, issued on July 8, 1988, with bid opening on August 19, 1988, contained a base bid item for window restoration on the East Facade of the Agriculture building to be bid on a lump-sum basis. There were five alternate items, each to be bid on a lump-sum basis, for additional facades of the building. Finally, there were five items of work (sill replacement, jamb replacement, etc.) to be bid on a unit price basis. These unit prices were to be used for addition or deletion of work by the contracting officer.

Brevco protested to the contracting officer on August 18, 1988, the day before bid opening, that certain specifications were ambiguous and the experience requirements in the

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IFB were restrictive of competition. Brevco did not submit a bid and award was made to Architectural Systems on September 20, 1988, based on an urgency determination, notwithstanding the protest.

Initially, Brevco argues that there was no urgency to justify making the award prior to resolution of the protest. Agriculture determined that some of the windows were in such poor condition that they were in danger of falling out and causing personal injury to pedestrians. Where an agency makes a determination to award a contract while a protest is pending, the agency's only obligation is to inform our Office of that decision, as Agriculture has done here. See 31 U.S.C. § 3553(c) (Supp. IV 1986). There is no requirement that a protester be allowed to rebut the agency's finding nor does this Office review such a determination. See, e.g., Dock Express Contractors, Inc., B-227865.3, Jan. 13, 1988, 88-1 CPD ¶ 23.

Regarding the bid schedule, Brevco argues that it is unclear how the items were to be priced and what was to be included in certain items. For the base item, which was to be bid as a lump-sum bid, Brevco states the schedule is ambiguous because it includes a unit price blank for the item. The schedule reads as follows:

<u>"ITEM</u> <u>No.</u>	<u>SUPPLIES/SERVICES</u>	<u>Quantity</u>	<u>Unit</u>	<u>Price</u>	<u>Amount</u>
1	Window Restoration on East Facade of USDA South Building as shown on Drawings."	1	job	\$ _____	\$ _____

We find the schedule clearly contemplates a single bid for the item in view of the estimated quantity and unit "1" "job" and therefore the unit price would be the same as the extended bid price.

Brevco also objects that it cannot tell whether the alternate items are to include any work for which a unit price was required and whether the unit prices were applicable for addition or deletion of work under the alternates.

The bid schedule contained the following clause preceding the items to be priced on a unit basis:

"Unit Prices: Unit price bids are required for the following items of work. The unit prices are applicable for the addition or deletion of such

work at locations designated by the Contracting Officer."

The specifications also contained the following clause regarding the alternates:

"3.01 SCHEDULE OF ALTERNATES:

The following five alternates identified on the drawings in the order of priority as Alternates 1, 2, 3, 4, and 5 shall have the same work provided for the windows, spandrels, lintels and other items as shown and specified for these items in the contract. This includes but is not limited to new mahogany sash, new base caps, removal of paint from frames, application of water repellants, preservatives and epoxies, application of 15 year warranted paint system to exterior of sash, frames, spandrels and lintels, interior paintings, calking and other work. All sections of the specification apply."

Upon a review of the entire bid package and pricing schedule, we find the impact of the various requirements to have been clear. Bidders were to bid on a lump-sum basis for the base item and the five alternates (additional facades of the building). Bidders were to price the other seven items on a unit price basis (linear feet of sill, jamb, etc.) so that if during performance, more or less work was required, the contracting officer could price the changes required. Clause 3.01 makes clear that the five alternates were to have the same work performed as that specified in the contract for the east Facade of the building, especially in view of the phrase "all sections of the specifications apply." The protest on these bases is denied.

Brevco also protests that the following clause in section I of the IFB does not define "similar" or "complexity" in connection with the certification to be submitted:

"(a) Provide a notarized certification that each of the firms performing the removal, fabrication, restoration and reinstallation, and painting of existing windows and the manufacture, installation and painting of new sash have each successfully completed at least three prior historic preservation projects of similar size and complexity within the last five years to the restoration of the exterior facade of the South Building - Agriculture with at least one project having a minimum of 500 windows."

We fail to see Brevco's confusion with this requirement. The complexity of the project is contained in the specifications (replacement of the windows) and the size is defined for at least 1 of the 3 projects as 500 windows. Moreover, no exact requirement need be stated as this was not a technical evaluation factor but a matter regarding a firm's responsibility.

Next, Brevco objects to the requirement that photographs of prior projects were to be submitted because the IFB did not contain any criteria under which the photographs would be evaluated. The IFB required:

". . . 2 color photographs (may be polaroid); 1 taken at a maximum of ten feet away from the window which is of similar size and complexity to the Agriculture South Building windows and 1 taken to show the overall effect of the new window work, showing several windows which are of similar size and complexity to the Agriculture South windows, showing how variations in opening sizes, plumbness, etc., have been dealt with."

We find the clause clearly states that the photographs will be used to determine how variations in opening size and plumbness, a problem in historic buildings due to settling over the years, have been solved by the bidder in prior projects.

The IFB also required that certain resumes be submitted. In section L, it was required that resumes be submitted for five technicians that would be employed on the contract, listing three projects that the technicians worked on. The resume forms included in the IFB also listed five trades or specialties that the contractor had to have experienced technicians for and noted that more than one specialty could be circled for a technician if that individual would be performing more than one function but all specialties had to be addressed.

Brevco states this should have been clarified as to whether a resume was needed for five technicians or whether a resume was needed for a technician in each specialty category and whether a resume was needed for one technician in each of the five categories.

We believe the IFB adequately described what was required in the resumes. A total of at least five resumes on individual technicians were required and the five trades or specialties had to be addressed. One technician could be qualified in

more than one trade. We find it clear that what the contracting officer was attempting to ascertain was whether the contractor had five qualified technicians, who among them covered the five specialties.

Brevco also protests that it was confused about when certain information, including the list of prior experience, resumes and photographs, was required to be submitted, either with the bid or upon request of the contracting officer. Brevco's confusion allegedly stems from the fact that the Table of Contents of the IFB listed these items under "Forms to be Completed by Bidders." However, as the agency points out, the listing in the Table of Contents was merely to alert bidders to what was in the bid package so that all bidders would have the forms to complete if requested by the contracting officer. Section L of the IFB, in the paragraph preceding these requirements, clearly states that the information shall be submitted upon request of the contracting officer.

Finally, the protester contends that the experience requirements of five projects of similar size and complexity which were completed while the buildings were occupied is unduly restrictive of competition.


When a protester alleges that specifications unduly restrict competition, the procuring agency bears the burden of presenting prima facie support for its position that the restrictions are necessary to meet its actual minimum needs. Kastle Systems, Inc., B-231990, Oct. 31, 1988, 88-2 CPD ¶ _____. The determination of the government's minimum needs, the best methods of accommodating them and the technical judgments upon which those determinations are based are primarily the responsibility of the contracting officials, who are most familiar with the conditions under which the supplies and services are to be used. M. C. D. Capital Corp., B-225830, July 10, 1987, 87-2 CPD ¶ 32. Consequently, once the agency establishes support for the challenged specifications, the burden shifts to the protester to show that the specifications in dispute are clearly unreasonable. Chicago City-Wide College, B-228593.4, Aug. 26, 1988, 88-2 CPD ¶ 183.

An agency can specify background qualifications provided those requirements are necessary to meet its minimum needs. J & J Maintenance, Inc., B-214209, Nov. 2, 1984, 84-2 CPD ¶ 488. In response to Brevco's protest, Agriculture says that only experience in occupied buildings meeting the agency standard of five projects of similar size and complexity can be used because the solicitation is for restoration of windows, which work is to be performed both

inside and outside an occupied building on historic property. The agency argues that the contractor qualified for the restoration must be capable of performing the work so as not to interfere with the government's operations.

We do not believe that Brevco has shown Agriculture's experience requirements to be unreasonable. The protester does not suggest any type of competency that would meet this requirement. Rather, the protester says that other types of criteria could be used to compensate for differences in experience working inside occupied buildings performing tasks required. In support of its position, Brevco has not submitted any evidence which tends to show how proof of qualifications of lesser experience than that in the existing solicitation could be equivalent. We have no reason to question the judgment of agency contracting personnel that such a requirement is essential to the compatible restoration of windows within the existing building.

The protest is denied.



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